
SUBSTITUTE SENATE BILL 5056

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Padden, Fortunato, Gildon, and L. Wilson)

1 AN ACT Relating to a special allegation for habitual property
2 offenders; reenacting and amending RCW 9.94A.533; adding a new
3 section to chapter 9.94A RCW; creating a new section; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds there to be a
7 significant number of property crimes in Washington and that the
8 current practices in the criminal justice system are ineffective in
9 reducing recidivism.

10 (2) The legislature further finds that a large portion of
11 property crimes in Washington are committed by habitual offenders.
12 Increasing the sanctions for habitual property offenders will provide
13 more effective deterrents to recidivism. The legislature intends to
14 enhance the courts' discretion to more appropriately sentence
15 habitual property offenders with significant histories of burglary
16 and theft.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A
18 RCW to read as follows:

1 (1) The prosecuting attorney may file a special allegation when
2 sufficient evidence exists to show that the accused is a habitual
3 property offender.

4 (2) In a criminal case in which there has been a special
5 allegation and the accused has been convicted of the underlying
6 crime, the court shall make a finding of fact prior to sentencing
7 whether the person is a habitual property offender based on the
8 person's criminal history. If the court finds beyond a reasonable
9 doubt that the person is a habitual property offender, the person
10 shall be sentenced in accordance with RCW 9.94A.533(16).

11 (3) For purposes of this section, a person is a habitual property
12 offender if:

13 (a) The present felony conviction for which the person is being
14 sentenced is for residential burglary, burglary in the second degree,
15 theft in the first degree, theft in the second degree, theft of a
16 firearm, unlawful issuance of checks or drafts, organized retail
17 theft, theft with special circumstances, or mail theft;

18 (b) The person has an offender score of nine points or higher;

19 (c) At least five of the points in the person's offender score
20 result from any combination of the following felony offenses:
21 Residential burglary; burglary in the second degree; theft in the
22 first degree; theft in the second degree; theft of a firearm;
23 unlawful issuance of checks or drafts; organized retail theft; theft
24 with special circumstances; or mail theft; and

25 (d) The person has committed three or more property crime
26 offenses within 180 days.

27 **Sec. 3.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are
28 each reenacted and amended to read as follows:

29 (1) The provisions of this section apply to the standard sentence
30 ranges determined by RCW 9.94A.510 or 9.94A.517.

31 (2) For persons convicted of the anticipatory offenses of
32 criminal attempt, solicitation, or conspiracy under chapter 9A.28
33 RCW, the standard sentence range is determined by locating the
34 sentencing grid sentence range defined by the appropriate offender
35 score and the seriousness level of the completed crime, and
36 multiplying the range by (~~seventy-five~~) 75 percent.

37 (3) The following additional times shall be added to the standard
38 sentence range for felony crimes committed after July 23, 1995, if
39 the offender or an accomplice was armed with a firearm as defined in

1 RCW 9.41.010 and the offender is being sentenced for one of the
2 crimes listed in this subsection as eligible for any firearm
3 enhancements based on the classification of the completed felony
4 crime. If the offender is being sentenced for more than one offense,
5 the firearm enhancement or enhancements must be added to the total
6 period of confinement for all offenses, regardless of which
7 underlying offense is subject to a firearm enhancement. If the
8 offender or an accomplice was armed with a firearm as defined in RCW
9 9.41.010 and the offender is being sentenced for an anticipatory
10 offense under chapter 9A.28 RCW to commit one of the crimes listed in
11 this subsection as eligible for any firearm enhancements, the
12 following additional times shall be added to the standard sentence
13 range determined under subsection (2) of this section based on the
14 felony crime of conviction as classified under RCW 9A.28.020:

15 (a) Five years for any felony defined under any law as a class A
16 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
17 years, or both, and not covered under (f) of this subsection;

18 (b) Three years for any felony defined under any law as a class B
19 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
20 both, and not covered under (f) of this subsection;

21 (c) Eighteen months for any felony defined under any law as a
22 class C felony or with a statutory maximum sentence of five years, or
23 both, and not covered under (f) of this subsection;

24 (d) If the offender is being sentenced for any firearm
25 enhancements under (a), (b), and/or (c) of this subsection and the
26 offender has previously been sentenced for any deadly weapon
27 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
28 subsection or subsection (4)(a), (b), and/or (c) of this section, or
29 both, all firearm enhancements under this subsection shall be twice
30 the amount of the enhancement listed;

31 (e) Notwithstanding any other provision of law, all firearm
32 enhancements under this section are mandatory, shall be served in
33 total confinement, and shall run consecutively to all other
34 sentencing provisions, including other firearm or deadly weapon
35 enhancements, for all offenses sentenced under this chapter. However,
36 whether or not a mandatory minimum term has expired, an offender
37 serving a sentence under this subsection may be:

38 (i) Granted an extraordinary medical placement when authorized
39 under RCW 9.94A.728(1)(c); or

40 (ii) Released under the provisions of RCW 9.94A.730;

1 (f) The firearm enhancements in this section shall apply to all
2 felony crimes except the following: Possession of a machine gun or
3 bump-fire stock, possessing a stolen firearm, drive-by shooting,
4 theft of a firearm, unlawful possession of a firearm in the first and
5 second degree, and use of a machine gun or bump-fire stock in a
6 felony;

7 (g) If the standard sentence range under this section exceeds the
8 statutory maximum sentence for the offense, the statutory maximum
9 sentence shall be the presumptive sentence unless the offender is a
10 persistent offender. If the addition of a firearm enhancement
11 increases the sentence so that it would exceed the statutory maximum
12 for the offense, the portion of the sentence representing the
13 enhancement may not be reduced.

14 (4) The following additional times shall be added to the standard
15 sentence range for felony crimes committed after July 23, 1995, if
16 the offender or an accomplice was armed with a deadly weapon other
17 than a firearm as defined in RCW 9.41.010 and the offender is being
18 sentenced for one of the crimes listed in this subsection as eligible
19 for any deadly weapon enhancements based on the classification of the
20 completed felony crime. If the offender is being sentenced for more
21 than one offense, the deadly weapon enhancement or enhancements must
22 be added to the total period of confinement for all offenses,
23 regardless of which underlying offense is subject to a deadly weapon
24 enhancement. If the offender or an accomplice was armed with a deadly
25 weapon other than a firearm as defined in RCW 9.41.010 and the
26 offender is being sentenced for an anticipatory offense under chapter
27 9A.28 RCW to commit one of the crimes listed in this subsection as
28 eligible for any deadly weapon enhancements, the following additional
29 times shall be added to the standard sentence range determined under
30 subsection (2) of this section based on the felony crime of
31 conviction as classified under RCW 9A.28.020:

32 (a) Two years for any felony defined under any law as a class A
33 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
34 years, or both, and not covered under (f) of this subsection;

35 (b) One year for any felony defined under any law as a class B
36 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
37 both, and not covered under (f) of this subsection;

38 (c) Six months for any felony defined under any law as a class C
39 felony or with a statutory maximum sentence of five years, or both,
40 and not covered under (f) of this subsection;

1 (d) If the offender is being sentenced under (a), (b), and/or (c)
2 of this subsection for any deadly weapon enhancements and the
3 offender has previously been sentenced for any deadly weapon
4 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
5 subsection or subsection (3)(a), (b), and/or (c) of this section, or
6 both, all deadly weapon enhancements under this subsection shall be
7 twice the amount of the enhancement listed;

8 (e) Notwithstanding any other provision of law, all deadly weapon
9 enhancements under this section are mandatory, shall be served in
10 total confinement, and shall run consecutively to all other
11 sentencing provisions, including other firearm or deadly weapon
12 enhancements, for all offenses sentenced under this chapter. However,
13 whether or not a mandatory minimum term has expired, an offender
14 serving a sentence under this subsection may be:

15 (i) Granted an extraordinary medical placement when authorized
16 under RCW 9.94A.728(1)(c); or

17 (ii) Released under the provisions of RCW 9.94A.730;

18 (f) The deadly weapon enhancements in this section shall apply to
19 all felony crimes except the following: Possession of a machine gun
20 or bump-fire stock, possessing a stolen firearm, drive-by shooting,
21 theft of a firearm, unlawful possession of a firearm in the first and
22 second degree, and use of a machine gun or bump-fire stock in a
23 felony;

24 (g) If the standard sentence range under this section exceeds the
25 statutory maximum sentence for the offense, the statutory maximum
26 sentence shall be the presumptive sentence unless the offender is a
27 persistent offender. If the addition of a deadly weapon enhancement
28 increases the sentence so that it would exceed the statutory maximum
29 for the offense, the portion of the sentence representing the
30 enhancement may not be reduced.

31 (5) The following additional times shall be added to the standard
32 sentence range if the offender or an accomplice committed the offense
33 while in a county jail or state correctional facility and the
34 offender is being sentenced for one of the crimes listed in this
35 subsection. If the offender or an accomplice committed one of the
36 crimes listed in this subsection while in a county jail or state
37 correctional facility, and the offender is being sentenced for an
38 anticipatory offense under chapter 9A.28 RCW to commit one of the
39 crimes listed in this subsection, the following additional times

1 shall be added to the standard sentence range determined under
2 subsection (2) of this section:

3 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
4 (a) or (b) or 69.50.410;

5 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
6 (c), (d), or (e);

7 (c) Twelve months for offenses committed under RCW 69.50.4013.

8 For the purposes of this subsection, all of the real property of
9 a state correctional facility or county jail shall be deemed to be
10 part of that facility or county jail.

11 (6) An additional (~~twenty-four~~) 24 months shall be added to the
12 standard sentence range for any ranked offense involving a violation
13 of chapter 69.50 RCW if the offense was also a violation of RCW
14 69.50.435 or 9.94A.827. All enhancements under this subsection shall
15 run consecutively to all other sentencing provisions, for all
16 offenses sentenced under this chapter.

17 (7) An additional two years shall be added to the standard
18 sentence range for vehicular homicide committed while under the
19 influence of intoxicating liquor or any drug as defined by RCW
20 46.61.502 for each prior offense as defined in RCW 46.61.5055.

21 Notwithstanding any other provision of law, all impaired driving
22 enhancements under this subsection are mandatory, shall be served in
23 total confinement, and shall run consecutively to all other
24 sentencing provisions, including other impaired driving enhancements,
25 for all offenses sentenced under this chapter.

26 An offender serving a sentence under this subsection may be
27 granted an extraordinary medical placement when authorized under RCW
28 9.94A.728(1)(c).

29 (8)(a) The following additional times shall be added to the
30 standard sentence range for felony crimes committed on or after July
31 1, 2006, if the offense was committed with sexual motivation, as that
32 term is defined in RCW 9.94A.030. If the offender is being sentenced
33 for more than one offense, the sexual motivation enhancement must be
34 added to the total period of total confinement for all offenses,
35 regardless of which underlying offense is subject to a sexual
36 motivation enhancement. If the offender committed the offense with
37 sexual motivation and the offender is being sentenced for an
38 anticipatory offense under chapter 9A.28 RCW, the following
39 additional times shall be added to the standard sentence range

1 determined under subsection (2) of this section based on the felony
2 crime of conviction as classified under RCW 9A.28.020:

3 (i) Two years for any felony defined under the law as a class A
4 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
5 years, or both;

6 (ii) Eighteen months for any felony defined under any law as a
7 class B felony or with a statutory maximum sentence of ten years, or
8 both;

9 (iii) One year for any felony defined under any law as a class C
10 felony or with a statutory maximum sentence of five years, or both;

11 (iv) If the offender is being sentenced for any sexual motivation
12 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
13 the offender has previously been sentenced for any sexual motivation
14 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
15 (iii) of this subsection, all sexual motivation enhancements under
16 this subsection shall be twice the amount of the enhancement listed;

17 (b) Notwithstanding any other provision of law, all sexual
18 motivation enhancements under this subsection are mandatory, shall be
19 served in total confinement, and shall run consecutively to all other
20 sentencing provisions, including other sexual motivation
21 enhancements, for all offenses sentenced under this chapter. However,
22 whether or not a mandatory minimum term has expired, an offender
23 serving a sentence under this subsection may be:

24 (i) Granted an extraordinary medical placement when authorized
25 under RCW 9.94A.728(1)(c); or

26 (ii) Released under the provisions of RCW 9.94A.730;

27 (c) The sexual motivation enhancements in this subsection apply
28 to all felony crimes;

29 (d) If the standard sentence range under this subsection exceeds
30 the statutory maximum sentence for the offense, the statutory maximum
31 sentence shall be the presumptive sentence unless the offender is a
32 persistent offender. If the addition of a sexual motivation
33 enhancement increases the sentence so that it would exceed the
34 statutory maximum for the offense, the portion of the sentence
35 representing the enhancement may not be reduced;

36 (e) The portion of the total confinement sentence which the
37 offender must serve under this subsection shall be calculated before
38 any earned early release time is credited to the offender;

1 (f) Nothing in this subsection prevents a sentencing court from
2 imposing a sentence outside the standard sentence range pursuant to
3 RCW 9.94A.535.

4 (9) An additional one-year enhancement shall be added to the
5 standard sentence range for the felony crimes of RCW 9A.44.073,
6 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
7 or after July 22, 2007, if the offender engaged, agreed, or offered
8 to engage the victim in the sexual conduct in return for a fee. If
9 the offender is being sentenced for more than one offense, the
10 one-year enhancement must be added to the total period of total
11 confinement for all offenses, regardless of which underlying offense
12 is subject to the enhancement. If the offender is being sentenced for
13 an anticipatory offense for the felony crimes of RCW 9A.44.073,
14 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
15 offender attempted, solicited another, or conspired to engage, agree,
16 or offer to engage the victim in the sexual conduct in return for a
17 fee, an additional one-year enhancement shall be added to the
18 standard sentence range determined under subsection (2) of this
19 section. For purposes of this subsection, "sexual conduct" means
20 sexual intercourse or sexual contact, both as defined in chapter
21 9A.44 RCW.

22 (10)(a) For a person age (~~(eighteen)~~) 18 or older convicted of
23 any criminal street gang-related felony offense for which the person
24 compensated, threatened, or solicited a minor in order to involve the
25 minor in the commission of the felony offense, the standard sentence
26 range is determined by locating the sentencing grid sentence range
27 defined by the appropriate offender score and the seriousness level
28 of the completed crime, and multiplying the range by (~~(one hundred~~
29 ~~twenty-five)~~) 125 percent. If the standard sentence range under this
30 subsection exceeds the statutory maximum sentence for the offense,
31 the statutory maximum sentence is the presumptive sentence unless the
32 offender is a persistent offender.

33 (b) This subsection does not apply to any criminal street gang-
34 related felony offense for which involving a minor in the commission
35 of the felony offense is an element of the offense.

36 (c) The increased penalty specified in (a) of this subsection is
37 unavailable in the event that the prosecution gives notice that it
38 will seek an exceptional sentence based on an aggravating factor
39 under RCW 9.94A.535.

1 (11) An additional (~~twelve~~) 12 months and one day shall be
2 added to the standard sentence range for a conviction of attempting
3 to elude a police vehicle as defined by RCW 46.61.024, if the
4 conviction included a finding by special allegation of endangering
5 one or more persons under RCW 9.94A.834.

6 (12) An additional (~~twelve~~) 12 months shall be added to the
7 standard sentence range for an offense that is also a violation of
8 RCW 9.94A.831.

9 (13) An additional (~~twelve~~) 12 months shall be added to the
10 standard sentence range for vehicular homicide committed while under
11 the influence of intoxicating liquor or any drug as defined by RCW
12 46.61.520 or for vehicular assault committed while under the
13 influence of intoxicating liquor or any drug as defined by RCW
14 46.61.522, or for any felony driving under the influence (RCW
15 46.61.502(6)) or felony physical control under the influence (RCW
16 46.61.504(6)) for each child passenger under the age of (~~sixteen~~)
17 16 who is an occupant in the defendant's vehicle. These enhancements
18 shall be mandatory, shall be served in total confinement, and shall
19 run consecutively to all other sentencing provisions, including other
20 minor child enhancements, for all offenses sentenced under this
21 chapter. If the addition of a minor child enhancement increases the
22 sentence so that it would exceed the statutory maximum for the
23 offense, the portion of the sentence representing the enhancement
24 shall be mandatory, shall be served in total confinement, and shall
25 run consecutively to all other sentencing provisions.

26 (14) An additional (~~twelve~~) 12 months shall be added to the
27 standard sentence range for an offense that is also a violation of
28 RCW 9.94A.832.

29 (15) Regardless of any provisions in this section, if a person is
30 being sentenced in adult court for a crime committed under age
31 (~~eighteen~~) 18, the court has full discretion to depart from
32 mandatory sentencing enhancements and to take the particular
33 circumstances surrounding the defendant's youth into account.

34 (16)(a) The following additional times shall be added to the
35 standard sentence range if the court finds that the offender is a
36 habitual property offender pursuant to section 2 of this act:

37 (i) Twenty-four months if the offender is being sentenced for a
38 felony defined as a class B felony;

39 (ii) Twelve months if the offender is being sentenced for a
40 felony defined as a class C felony.

1 (b) A sentence imposed pursuant to this subsection is not to
2 exceed the statutory maximum for the crime as established in RCW
3 9A.20.021.

4 (c) Notwithstanding any other provision of law, all habitual
5 property offender enhancements imposed under this subsection (16) are
6 at the discretion of the court. However, whether or not the mandatory
7 minimum term has expired, an offender serving a sentence under this
8 subsection may be granted an extraordinary medical placement when
9 authorized under RCW 9.94A.728(1)(c).

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